

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,	)	
	)	
Plaintiff,	)	Case No. 2:18-cv-00540-RSL
v.	)	
	)	
TOTAL TERMINALS	)	CONSENT DECREE
INTERNATIONAL, LLC; and PORT OF	)	
SEATTLE,	)	
	)	
Defendants.	)	

I. STIPULATIONS

WHEREAS, Plaintiff Puget Soundkeeper Alliance (“Soundkeeper”) filed an amended complaint against Defendants Total Terminals International, LLC (“TTI”) and the Port of Seattle (the “Port”) (collectively “Defendants”) alleging violations of the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from TTI’s and the Port’s facility located at 401 Alaskan Way S, Seattle, WA 98104 (the “Facility”), and seeking declaratory and injunctive relief, civil penalties, and attorneys’ fees and costs.

WHEREAS, TTI will be vacating the Facility, terminating its lease with the Port, and ceasing operation at the Facility by December 31, 2019.

WHEREAS, as of the date of entry of this Consent Decree, the Port does not yet have a replacement tenant for TTI at the Facility. The Port anticipates that a portion of the Terminal 46

1 site may become a cruise ship terminal and the remaining portion may have marine cargo  
2 operations.

3 WHEREAS, Soundkeeper, TTI, and the Port agree that settlement of these matters is in  
4 the best interest of the parties and the public, and that entry of this Consent Decree is the most  
5 appropriate means of resolving this action.

6 WHEREAS, Soundkeeper, TTI, and the Port stipulate to the entry of this Consent Decree  
7 without trial or adjudication of any issues of fact or law regarding Soundkeeper's claims that  
8 remain undecided, and without any admissions other than those expressly provided in this  
9 Consent Decree.

10 DATED this 11th day of September, 2019

11 KING & SPALDING LLP

SMITH & LOWNEY PLLC

12  
13 By s/Adam Sowatzka  
14 Adam Sowatzka, *pro hac vice*  
Joseph Akrotirianakis, *pro hac vice*

By s/Alyssa Englebrecht  
Alyssa Englebrecht, WSBA #46773  
Knoll Lowney, WSBA #23457  
Attorneys for Plaintiff  
Puget Soundkeeper Alliance

15 BAUER MOYNIHAN & JOHNSON LLP

16 Matthew Crane, WSBA #18003  
17 Attorneys for Defendant  
Total Terminals International, LLC

18  
19 STOEL RIVES LLP

PUGET SOUNDKEEPER ALLIANCE

20 By s/Beth Ginsberg  
21 Beth Ginsberg, WSBA #18523  
Veronica Keithley, WSBA #52784  
22 Attorneys for Defendant  
Port of Seattle

By \_\_\_\_\_  
Walt Tabler  
Puget Soundkeeper Board Member

23  
24  
25  
26  
CONSENT DECREE  
No. 2:18-cv-00540-RSL

2

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

1 site may become a cruise ship terminal and the remaining portion may have marine cargo  
2 operations.

3 WHEREAS, Soundkeeper, TTI, and the Port agree that settlement of these matters is in  
4 the best interest of the parties and the public, and that entry of this Consent Decree is the most  
5 appropriate means of resolving this action.

6 WHEREAS, Soundkeeper, TTI, and the Port stipulate to the entry of this Consent Decree  
7 without trial or adjudication of any issues of fact or law regarding Soundkeeper's claims that  
8 remain undecided, and without any admissions other than those expressly provided in this  
9 Consent Decree.

10 DATED this \_\_th day of \_\_\_\_, 2019

11 KING & SPALDING LLP

SMITH & LOWNEY PLLC

12  
13 By s/\_\_\_\_\_  
14 Adam Sowatzka, *pro hac vice*  
Joseph Akrotirianakis, *pro hac vice*

By s/Alyssa Englebrecht  
Alyssa Englebrecht, WSBA #46773  
Knoll Lowney, WSBA #23457  
Attorneys for Plaintiff  
Puget Soundkeeper Alliance

15 BAUER MOYNIHAN & JOHNSON LLP

16 By s/\_\_\_\_\_  
17 Matthew Crane, WSBA #18003  
18 Attorneys for Defendant  
Total Terminals International, LLC

19 STOEL RIVES LLP

PUGET SOUNDKEEPER ALLIANCE

20 By s/\_\_\_\_\_  
21 Beth Ginsberg, WSBA #18523  
22 Veronica Keithley, WSBA #52784  
Attorneys for Defendant  
Port of Seattle

By \_\_\_\_\_  
Walt Tabler  
Puget Soundkeeper Board Member


*President*

23  
24  
25  
26  
CONSENT DECREE  
No. 2:18-cv-00540-RSL

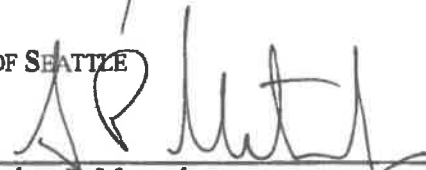
2

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

1 TOTAL TERMINALS INTERNATIONAL, LLC

2  
3 By   
4 Graham Scott  
Chief Executive Officer

5 PORT OF SEATTLE

6  
7 By   
8 Stephen P. Metruck  
Executive Director  
Port of Seattle

9  
10 **I. ORDER AND DECREE**

11 THIS MATTER came before the Court upon the foregoing Stipulations of the parties.  
12 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,  
13 ADJUDGES, and DECREES as follows:

- 14 1. This Court has jurisdiction over the parties and subject matter of this action.
- 15 2. Each signatory for the parties certifies for that party that he or she is fully  
16 authorized by the party or parties he or she represents to enter into the terms and conditions of  
17 this Consent Decree and to legally bind the party or parties, their successors in interest and  
18 assigns of the parties to it.
- 19 3. This Consent Decree applies to and binds the parties and their successors and  
20 assigns.
- 21 4. This Consent Decree and any injunctive relief ordered within will apply to the  
22 operation, oversight, or both by the Port and TTI of the Facility, which is currently subject to  
23 National Pollutant Discharge Elimination System Permit No. WAR000465 (the "NPDES  
24 permit").
- 25 5. This Consent Decree is a full and complete settlement, covenant not to sue, and  
26 release of all the claims alleged in the amended complaint, and all other claims known and

CONSENT DECREE  
No. 2:18-cv-00540-RSL  
3

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

1 unknown, contingent or otherwise, for any acts or omissions, existing as of the date of entry of  
2 this Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,  
3 arising from operations of the Facility against TTI, its parent, affiliates, subsidiaries, employees,  
4 agents, successors and assigns and/or the Port, its affiliates, employees, or agents. These claims  
5 are released and dismissed with prejudice.

6         6.       This Consent Decree is a settlement of disputed facts and law. This Consent  
7 Decree is not an admission or adjudication regarding any specific allegations by Soundkeeper in  
8 this case or of any fact or conclusion of law related to those allegations that remain undecided,  
9 nor evidence of any wrongdoing or misconduct on the part of TTI or the Port.

10        7.       TTI and the Port agree to the following terms and conditions in full and complete  
11 satisfaction of all the claims covered by this decree:

12             a.       Until such time as TTI vacates the Facility and ceases all operations there,  
13 TTI and the Port will comply with all conditions of the NPDES permit and any successor,  
14 modified, or replacement permit authorizing discharges of stormwater associated with  
15 industrial activity from the Facility. Until such time as TTI vacates the Facility and  
16 ceases all operations there, TTI and/or the Port will continue to implement all monitoring  
17 and best management practices (“BMPs”) which are currently being implemented at the  
18 Facility;

19             b.       Within thirty (30) days after TTI’s departure from the Facility, the Port  
20 and/or TTI will inspect and clean all stormwater lines, catch basins, and the existing  
21 treatment systems, at the Facility. Within thirty (30) days after TTI’s departure from the  
22 facility, TTI and/or the Port will sweep the entire Facility and properly dispose of all  
23 swept material. Within ten (10) days after the date upon which TTI and/or the Port has  
24 completed the inspection, stormwater system cleaning, and sweeping obligations  
25 described in this paragraph, the Port will permit Soundkeeper and its consultant to inspect  
26 the Facility to confirm that the Port and TTI have completed the work described above,

CONSENT DECREE  
No. 2:18-cv-00540-RSL  
4

**SMITH & LOWNEY, P.L.L.C.**  
**2317 EAST JOHN ST.**  
**SEATTLE, WASHINGTON 98112**  
**(206) 860-2883**

1 TTI has ceased all industrial activity, properly vacated the facility, and has obtained  
2 Ecology's concurrence that TTI has terminated its coverage under the NPDES permit.  
3 The parties will work cooperatively to find a mutually agreeable time for Soundkeeper's  
4 inspection. If for any reason Soundkeeper is unable to enter the Facility by the deadline  
5 provided in this paragraph, TTI and the Port's obligation to permit Soundkeeper onto the  
6 Facility will continue and the parties will cooperate to schedule a time for Soundkeeper's  
7 entry as soon as practicable.

8 c. The Port will perform regular and necessary maintenance on the Facility's  
9 existing treatment systems per the Operation & Maintenance manual's recommendations  
10 and more frequently as needed to provide optimal treatment function, until any of the  
11 following occurs:

12 i. The existing treatment systems are replaced with another properly  
13 engineered and approved treatment system, or;

14 ii. A new tenant commences marine cargo operations or other permit  
15 triggering industrial operations at the Facility in any basin, applies for and  
16 receives Industrial Stormwater General Permit ("ISGP") coverage at the Facility,  
17 and assumes full responsibility for maintaining the treatment system(s), or;

18 iii. A new tenant commences cruise ship terminal operations in any  
19 basin in which the existing treatment system(s) is currently installed, implements  
20 the BMPs identified in paragraph 7.d.i, below, and assumes full responsibility for  
21 maintaining the treatment system(s).

22 d. In the event that all or a portion of the Facility becomes a cruise ship  
23 terminal, the Port will, for that portion of the Facility:

24 i. Implement the BMPs for cruise ship operations identified in  
25 paragraph 8 of the July 6, 2016 consent decree entered in *Puget Soundkeeper*  
26 *Alliance v. Cruise Terminals of America, LLC et al.*, W.D. Wash. No. 2:14-cv-

00476, a copy of which is attached hereto as Attachment A, at this Facility immediately upon commencement of operations as a cruise ship terminal. The Port will either implement these BMPs itself, or the Port will require its tenant or a designee to implement these BMPs. If the Port chooses to require its tenant to implement these BMPs, the implementation of these BMPs will be an enforceable provision of the Port's lease with that tenant. Any failure to implement the BMPs in Attachment A will be a violation of this Consent Decree. The Port, its designee, or its tenant will provide Soundkeeper with a report twice per year, consistent with Paragraph 9 of Attachment A, and which additionally documents the implementation of such BMPs with photos provided to Soundkeeper. The requirement to implement such BMPs shall specifically be made an obligation of the tenant in any future lease between the Port and cruise terminal tenants. In consideration of these obligations, Soundkeeper covenants not to sue the Port, or materially support, financially or otherwise, any other person to sue the Port, for any of the discharges associated with cruise-related activities.<sup>1</sup>

ii. Include in any request for proposals for a cruise operator, or otherwise notify potential cruise operators in writing with a copy to Soundkeeper, prior to commencing cruise operations, that ISGP coverage may be required at this Facility.

e. In the event that all or a portion of the Facility is used for marine cargo operations which have vehicle maintenance activity, equipment cleaning operations, or airport deicing operations, or other permit-triggering industrial operations,<sup>2</sup> the Port will,

<sup>1</sup> By agreeing to the obligations set forth in subsections 7(d) of this Consent Decree, Soundkeeper does not concede, and expressly retains the right to contest in future litigation, the proposition that cruise ship terminals do not engage in industrial activity requiring ISGP coverage for associated stormwater discharges.

<sup>2</sup> By agreeing to the obligations set forth in subsection 7(e), Soundkeeper does not concede, and expressly retains the right to contest in future litigation, the proposition that the conditions of the ISGP apply only to those portions of the

1 for the entire footprint<sup>3</sup> of the portion of the Facility which is being leased as a marine  
2 cargo terminal or other permit-triggering operation, and areas otherwise used by the  
3 tenant including all exclusive and preferential use areas identified in the lease:

4 i. Sweep, or require that the future tenant sweep, the wharf area<sup>4</sup> of  
5 the Facility, as identified on the map attached hereto as Attachment B, so that the  
6 entire surface of the wharf area is swept bi-weekly;

7 ii. Conduct, or require that the future tenant conduct, quarterly  
8 sampling of at least one representative discharge point from the wharf, identified  
9 on the map attached hereto as Attachment B, and the results of this quarterly  
10 sampling must be submitted to Ecology and Soundkeeper, consistent with the  
11 requirements of the Port's Municipal Separate Storm Sewer System ("MS4")  
12 permit, except that the Port need not sample during unsafe conditions. If, at any  
13 point during the period of this Consent Decree, a Court orders that the wharf area  
14 of marine cargo terminals is subject to the requirements of the ISGP in the  
15 absence of industrial activities on the wharf, then the results must be submitted  
16 quarterly;

17 iii. In the event the Port enters into a lease agreement with an  
18 international container terminal operator with operations substantially similar to  
19 TTI's (i.e., a maritime transshipment terminal handling international  
20 containerized cargo at a rate of at least 110 container lifts per acre per month on  
21

---

22 facility upon which vehicle maintenance or equipment cleaning is performed, rather than the entire footprint of  
23 marine transportation facilities.

24 <sup>3</sup> By agreeing to the obligations set forth in subsection 7(e), the Port does not concede, and expressly retains the  
25 right to contest in future litigation, the proposition that the conditions of the ISGP apply to the entire footprint of  
26 marine transportation facilities, rather than only to those portions of the facility upon which vehicle maintenance or  
equipment cleaning is performed.

<sup>4</sup> By agreeing to the obligations set forth in subsection 7(e), the Port does not concede, and expressly retains the  
right to contest in future litigation, the proposition that the wharf area is covered under the ISGP in the absence of  
industrial activities on the wharf.

CONSENT DECREE  
No. 2:18-cv-00540-RSL

7

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883



1 average), the Port will design or hire a consultant to design a stormwater  
2 treatment system to modify or replace the existing treatment system(s) for all  
3 basins use for any such operations and draft an engineering report detailing the  
4 proposal. The Port will complete the draft engineering report sufficiently in  
5 advance of the initiation of operations by the new tenant such that the process set  
6 forth in subparagraphs 7.e.iii.A-7.e.iii.F, *infra*, can take place before operations  
7 begin. In this case, the Port will consult with Soundkeeper as follows:

8 A. The Port will provide the engineering report to  
9 Soundkeeper within ten (10) days of its completion;

10 B. Soundkeeper will have thirty (30) days to provide  
11 objections, comments, and/or proposed revisions to the draft engineering  
12 report. During this thirty (30) day time period, the Port will permit  
13 Soundkeeper to inspect the Facility. The parties will work cooperatively to  
14 find a mutually agreeable time for Soundkeeper's inspection. If for any  
15 reason Soundkeeper is unable to enter the Facility by the deadline  
16 provided in this paragraph, the Port's obligation to permit Soundkeeper  
17 onto the Facility will continue and the parties will cooperate to schedule a  
18 time for Soundkeeper's entry as soon as practicable;

19 C. The Port will respond in writing to Soundkeeper's  
20 objections, comments, and/or proposed revisions within fourteen (14)  
21 days;

22 D. Should the Port not accept any of Soundkeeper's  
23 comments, objections, and/or proposed revisions, the parties, including the  
24 author of the Port's draft engineering report, will meet and confer in good  
25 faith about any remaining disagreements as soon as practical;  
26

1                   E.       Should the Port not accept Soundkeeper's comments,  
2                   objections and/or proposed revisions, the Port and/or its tenant will submit  
3                   the engineering report, as reviewed and revised, along with Soundkeeper's  
4                   comments, objections and/or proposed revisions, to Ecology with a  
5                   citation to this Consent Decree and a joint request from the Port and/or its  
6                   tenant and Soundkeeper that Ecology review the Port's/its tenant's  
7                   submittal and determine what changes are necessary for approval, if any,  
8                   in light of Soundkeeper's comments, objections and/or proposed revisions;

9                   F.       The Port will promptly comply with the engineering report  
10                  in the form revised and/or approved by Ecology and will make all  
11                  reasonable efforts to install the treatment system prior to the  
12                  commencement of marine cargo terminal or other permit-triggering  
13                  operations at the facility.

14               iv.       In the event a future tenant that is not an international container  
15               terminal operator with operations substantially similar to TTI's (i.e., a maritime  
16               transshipment terminal handling international containerized cargo at a rate of at  
17               least 110 container lifts per acre per month on average) triggers a Level 3  
18               corrective action as defined by ISGP Condition S8.D or any comparable condition  
19               in its Stormwater Pollution Prevention Plan's Sampling Plan, the Port will design  
20               or hire a consultant to design a stormwater treatment system to modify or replace  
21               the existing treatment system(s) for all basins used for any marine cargo terminal  
22               operations or other permit-triggering industrial operations and draft an  
23               engineering report detailing the proposal. The Port will consult with Soundkeeper  
24               as outlined above in subparagraphs 7.e.iii.A-7.e.iii.F.

25               v.       In the event any new tenant triggers a Level 2 or 3 corrective  
26               action, as defined by ISGP Condition S8.D or any comparable condition in any

1 subsequent iteration of the ISGP, and if the tenant thereafter requests a  
2 modification of permit coverage in the form of a waiver or an extension of time to  
3 complete the Level 2 or 3 corrective action, per ISGP Condition S8.C.4 or S8.D.5  
4 or any comparable condition in any subsequent iteration of the ISGP, the Port  
5 and/or the tenant will inform Soundkeeper in writing of this request  
6 simultaneously with Ecology.

7 vi. In the event that future tenant(s) at the Facility do not have  
8 operations which have vehicle maintenance activity, equipment cleaning  
9 operations, or airport deicing operations, or other permit-triggering industrial  
10 operations, and therefore do not obtain ISGP coverage for the Facility, the Port  
11 will provide a twice yearly report to Soundkeeper, in June and December of each  
12 year prior to the expiration of this Consent Decree, identifying the tenant(s)  
13 operating at the Facility and the nature of their operations.

14 8. In the spirit of demonstrating a cooperative resolution to the community, the  
15 Parties will endeavor to work together in good faith in issuing a joint press release regarding  
16 filing of this Consent Decree. The party planning to issue such release shall give the other parties  
17 48 hours opportunity to review the draft and provide their respective input. If any party objects  
18 to any language of that draft press release within one (1) business day (24 hours) (or the same  
19 time on the following business day if over a weekend or holiday) of receiving the draft, the  
20 parties shall in good faith work together to resolve the issue(s) prior to issuing the press release.  
21 If, after 72 hours, the parties are unable to agree on a joint press release, each is free to issue their  
22 own respective press release. Nothing in this decree limits any of the parties from issuing press  
23 releases around other past or future milestones in the course of this case and/or settlement.  
24 Nothing in this decree in any way limits statements that can be made to the press.

25 9. Not later than ten (10) days after the entry of this Consent Decree by this Court,  
26 TTI will pay a total of \$735,000 to the Rose Foundation for projects to improve the water quality

CONSENT DECREE  
No. 2:18-cv-00540-RSL  
10

**SMITH & LOWNEY, P.L.L.C.**  
**2317 EAST JOHN ST.**  
**SEATTLE, WASHINGTON 98112**  
**(206) 860-2883**

1 of Elliott Bay, as described in Attachment C to this Consent Decree, for which TTI and the Port  
2 are jointly and severally liable. The check will be made to the order of The Rose Foundation and  
3 delivered to: The Rose Foundation, 201 4th Street, Suite 102, Oakland, CA 94607. Payment will  
4 include the following reference in a cover letter or on the check: "Consent Decree, Soundkeeper  
5 v. Total Terminals International, LLC, et al." A copy of the check and cover letter, if any, will  
6 be sent simultaneously to Soundkeeper and its counsel.

7       10.     Within ten (10) days of entry of this Consent Decree by the Court, TTI will pay a  
8 total of \$165,000 dollars to cover Soundkeeper's litigation fees, expenses, and costs (including  
9 reasonable attorney, expert witness and post-Consent Decree fees) by check payable and mailed  
10 to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn: Knoll Lowney. TTI's  
11 and the Port's payment will be in full and complete satisfaction of any claims Soundkeeper has  
12 or may have, either legal or equitable, and of any kind or nature whatsoever, for fees, expenses,  
13 and costs incurred in the Litigation.

14       11.     The payments described in Paragraphs 8 and 9 above shall be in full and complete  
15 satisfaction of any claims Soundkeeper has or may have against the Port or TTI, either legal or  
16 equitable, and of any kind or nature whatsoever, for fees, expenses, and cost incurred in this  
17 litigation, or for civil penalties, or payments in lieu of civil penalties pursuant to a supplemental  
18 environmental project under the CWA.

19       12.     With the exception of actions to enforce this Consent Decree, and in consideration  
20 of TTI's and the Port's obligations under this Consent Decree, for the term of this Consent  
21 Decree, as defined in paragraph 15, below, Soundkeeper covenants not to sue TTI, the Port, the  
22 Northwest Seaport Alliance as agent of the Port, or materially support, financially or otherwise,  
23 any person to sue TTI, the Port, the Northwest Seaport Alliance as agent of the Port, for any and  
24 all claims alleged against TTI or the Port in the Amended Complaint and all other claims, known  
25 and unknown, existing as of the date of entry of this Consent Decree, that could be asserted  
26

CONSENT DECREE  
No. 2:18-cv-00540-RSL

11

**SMITH & LOWNEY, P.L.L.C.**  
**2317 EAST JOHN ST.**  
**SEATTLE, WASHINGTON 98112**  
**(206) 860-2883**

1 against TTI or the Port arising under the Clean Water Act, 33 U.S.C. §§ 1251-1387 with respect  
2 to the Facility.

3 13. A force majeure event is any event outside the reasonable control of TTI and/or  
4 the Port that causes a delay in performing tasks required by this decree that cannot be cured by  
5 due diligence. Delay in performance of a task required by this decree caused by a force majeure  
6 event is not a failure to comply with the terms of this decree, provided that TTI and/or the Port  
7 timely notifies Soundkeeper of the event; the steps that TTI and/or the Port will take to perform  
8 the task; the projected time that will be needed to complete the task; and the measures that have  
9 been taken or will be taken to prevent or minimize any impacts to stormwater quality resulting  
10 from delay in completing the task.

11 TTI and/or the Port will notify Soundkeeper of the occurrence of a force majeure event as  
12 soon as reasonably possible but, in any case, no later than fifteen (15) days after the occurrence  
13 of the event. In such event, the time for performance of the task will be extended for a  
14 reasonable period of time following the force majeure event.

15 By way of example and not limitation, force majeure events include

- 16 a. Acts of God, war, insurrection, or civil disturbance;
- 17 b. Earthquakes, landslides, fire, floods;
- 18 c. Actions or inactions of third parties over which defendants have no  
19 control;
- 20 d. Unusually adverse weather conditions;
- 21 e. Restraint by court order or order of public authority;
- 22 f. Strikes;
- 23 g. Any permit or other approval sought by TTI and/or the Port or a future  
24 Port tenant from a government authority to implement any of the actions  
25 required by this consent decree where such approval is not granted or is  
26

1 delayed, and where TTI and/or the Port has timely and in good faith  
2 sought the permit or approval; and

3 h. Litigation, arbitration, or mediation that causes delay.

4 14. This Court retains jurisdiction over this matter. And, while this Consent Decree  
5 remains in force, this case may be reopened without filing fee so that the parties may apply to the  
6 Court for any further order that may be necessary to enforce compliance with this decree or to  
7 resolve any dispute regarding the terms or conditions of this Consent Decree. In the event of a  
8 dispute regarding implementation of, or compliance with, this Consent Decree, the parties must  
9 first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures  
10 for resolving the dispute. The provisions of CWA section 505(d), 33 U.S.C. § 1365(d),  
11 regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to  
12 any prevailing or substantially prevailing party, will apply to any proceedings seeking to enforce  
13 the terms and conditions of this Consent Decree.

14 15. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent  
15 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior  
16 to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the  
17 U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the filing of this  
18 Consent Decree by the parties, Soundkeeper will serve copies of it upon the Administration of  
19 the U.S. EPA and the Attorney General, with a copy to TTI and the Port.

20 16. This Consent Decree will take effect upon entry by this Court. It terminates three  
21 (3) years after that date.

22 17. All parties have participated in drafting this Consent Decree.

23 18. This Consent Decree may be modified only upon the approval of the Court.

24 19. If for any reason the Court should decline to approve this Consent Decree in the  
25 form presented, this Consent Decree is voidable at the discretion of either party. The parties  
26

CONSENT DECREE  
No. 2:18-cv-00540-RSL  
13

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

1 agree to continue negotiations in good faith in an attempt to cure any objection raised by the  
2 Court to entry of this Consent Decree.

3 20. Notifications required by this Consent Decree must be in writing. The sending  
4 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or  
5 certified mail, in each case return receipt requested and postage prepaid; or (3) a nationally  
6 recognized overnight courier, with all fees prepaid. For a notice or other communication  
7 regarding this decree to be valid, it must be delivered to the receiving party at the one or more  
8 addresses listed below or to any other address designated by the receiving party in a notice in  
9 accordance with this paragraph 17.

10  
11 if to Soundkeeper:

12 Katelyn Kinn  
13 Puget Soundkeeper Alliance  
14 130 Nickerson Street, Suite 107  
Seattle, WA 98109  
Email: katelyn@pugetsoundkeeper.org

15 and to:

16 Alyssa Englebrecht  
17 Knoll Lowney  
18 Smith & Lowney PLLC  
2317 East John St.  
19 Seattle, WA 98112  
email: alyssa@smithandlowney.com, knoll@smithandlowney.com

20 if to TTI:

21 Robert Johnson  
22 Chief Compliance Officer  
23 Total Terminals International, LLC  
301 Mediterranean Way  
24 Long Beach, CA 90802  
email: robertjo@totalterminals.com

25 Adam G. Sowatzka  
26 Joseph N. Akrotirianakis

CONSENT DECREE  
No. 2:18-cv-00540-RSL

14

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

King & Spalding LLP  
1180 Peachtree Street, NE, Suite 1600  
Atlanta, GA 30309-3521  
email: asowatzka@kslaw.com; jakro@kslaw.com

if to the Port:

Elizabeth Black  
Senior Port Counsel  
Port of Seattle  
2711 Alaskan Way  
Seattle, WA 98111  
email: black.e@portseattle.org

A notice or other communication regarding this Consent Decree will be effective when received unless the notice or other communication is received after 5:00 p.m. on a business day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day. A notice or other communication will be deemed to have been received: (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

DATED this 7<sup>th</sup> day of November, 2019.



HON. ROBERT S. LASNIK  
UNITED STATES DISTRICT JUDGE

Presented by:

CONSENT DECREE  
No. 2:18-cv-00540-RSL  
15

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883



1  
2 KING & SPALDING LLP

3 By s/Adam Sowatzka  
4 Adam Sowatzka, *pro hac vice*  
5 John Fortuna, *pro hac vice*  
6 Joseph Akrotirianakis, *pro hac vice*  
7 Attorneys for Defendant  
8 Total Terminals International, LLC

9  
10 BAUER MOYNIHAN & JOHNSON LLP

11 By s/Matthew Crane  
12 Matthew Crane, WSBA #18003  
13 Attorneys for Defendant  
14 Total Terminals International, LLC

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

SMITH & LOWNEY PLLC

By s/Alyssa Englebrecht  
Alyssa Englebrecht, WSBA #46773  
Knoll Lowney, WSBA #23457  
Attorneys for Plaintiff  
Puget Soundkeeper Alliance

CONSENT DECREE  
No. 2:18-cv-00540-RSL  
16

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

# **ATTACHMENT A**

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,

Plaintiff,

v.

CRUISE TERMINALS OF AMERICA,  
LLC, et al.,

Defendants.

CASE NO. C14-0476 JCC

ORDER ENTERING CONSENT  
DECREE

THIS MATTER comes before the Court upon the parties' joint stipulated motion for entry of a consent decree (Dkt. No. 121). Having considered the stipulations and the promises and agreements set forth below, the Court ORDERS, ADJUDGES, AND DECREES as follows:

1. The Court has jurisdiction over the parties and subject matter of this action.
2. Each signatory for the parties certifies that he or she is authorized to enter into the agreements set forth below for that party.
3. This Consent Decree applies to the cruise terminal at Pier 66, 2225 Alaskan Way, Seattle, Washington 98121 (the "Facility").
4. This Consent Decree binds Soundkeeper's successors and assigns and any successor owner or operator of the Facility.

1           5.       The parties are concurrently executing an agreement with respect to  
2 implementation of best management practices at the cruise terminal at Pier 91, 2001 West  
3 Garfield St., Seattle, Washington 98119 ("Pier 91 Agreement"). Certain terms of the Pier 91  
4 Agreement are referenced in this Consent Decree, but the Pier 91 Agreement sets forth the  
5 exclusive terms of, remedy for enforcement of, and resolution of disputes arising under the Pier  
6 91 Agreement.

7           6.       This Consent Decree is a full and complete settlement of the claims in the First  
8 Amended Complaint and all other claims known and unknown and existing as of the date of  
9 entry of this Consent Decree that could be asserted against CTA or the Port under the Clean  
10 Water Act, 33 U.S.C. §§ 1251-1387, arising from ownership or operations of the Facility (the  
11 "Claims"). The Claims are released and dismissed with prejudice. Enforcement of this decree is  
12 Soundkeeper's exclusive remedy for any violation of its terms.

13           7.       This Consent Decree is a settlement of disputed facts and law. It is not an  
14 admission or adjudication regarding any allegations by Soundkeeper in this case or of any fact or  
15 conclusion of law related to those allegations. It is not an admission by CTA or the Port of any  
16 liability and is not evidence of any wrongdoing or misconduct on the part of CTA or the Port.

17           8.       As partial consideration for the releases and settlement of claims as provided  
18 herein, the Port agrees that it, its tenant, or a designee will implement the following best  
19 management practices (BMPs) for cruise operations at the Facility on Pier 66, after entry of the  
20 Consent Decree:

21                   a.       **Fueling and Maintenance:**

- 22                           i.   No fueling, except for the gangway and cranes which are discussed  
23                               below, may occur on any portion of the Facility that discharges  
24                               stormwater to Elliott Bay.
- 25                           ii. No maintenance of vehicles may occur on any portion of the Facility  
26                               that discharges stormwater to Elliott Bay. Maintenance of vehicles  
                             includes, but is not limited to, changing lubricating, hydraulic and/or

transmission oil; topping off fluids, changing oil and/or fuel filters, grinding, sanding, welding, mechanical repairs, and/or painting.

iii. For the main passenger gangway system and cranes at the facility:

1. Drip collection pans or other effective containment devices must be placed under equipment that are subject to fluid leaks, including but not limited to areas where fluids are changed and topped off, fuel is added, and fuel tanks are exchanged;
2. Tarps or drop cloths must be placed under equipment being repaired if the equipment is immobile or emergency repairs must be made before it can be removed off-site; and
3. The contents of the containment devices, tarps and/or drop cloths must be collected after each procedure and disposed of in a manner consistent with federal, state and local laws.

**b. Storage of Equipment:**

- i. When parked or stored without covered protection from precipitation, drip collection pans or other containment devices are to be placed under any parts of mobile equipment that have petroleum-based materials exposed to precipitation and/or runoff. The containment devices must have sufficient depth and/or capacity to contain any precipitation that enters. The contents of the containment devices must be collected and disposed of in a manner consistent with federal, state, and local laws. These measures must be applied to the following equipment at a minimum:
  1. Parts of the main passenger gangway, including but not limited to screw jacks and exposed drive and positioning mechanisms. Drip pans or other effective containment devices must be employed in both the cruise-season and off-season locations.
  2. Parts of the cranes including but not limited to gearing and hydraulic oil lines/connections
  3. Parts of the fork lifts including but not limited to greased components and hydraulic oil lines/connections.

**c. Product Delivery and Waste Removal:**

- i. At the pier, drip collection pans or other effective containment devices must be placed under all hose connections during fluid transfers to and

1 from ships and at all hose connection points. The contents of the  
2 containment devices must be disposed in a manner consistent with  
federal, state, and local laws.

3 ii. All hoses used in fluid transfers must be inspected immediately before  
4 they are used to transfer fluids and any damaged or flawed hose  
5 sections replaced before any transfer. For oil and hazardous material  
6 transfers, a record of these inspections, observations made and  
7 replacements provided will be kept on the Declaration of Inspection  
Prior to Bulk Cargo Transfer required by the US Coast Guard under 33  
CFR 156.

8 iii. The following fluid transfer operations at the Facility will be  
conducted as follows:

- 9 1. Lubricating oil deliveries to vessels: The measures in c. i. and ii  
10 will be used at each connection point at the delivery trucks, and  
11 booms will be installed around oil delivery truck tanks before  
12 transfers begin. Storm drains located within the area controlled by  
the land boom will be protected. The Port will have land boom,  
13 drain covers, and drip pans available for vendors.
- 14 2. Oily bilge water removal from vessels: The measures in c. i. and ii  
will be used at each connection point at the removal truck.
- 15 3. Sewage removal from vessels: The measures in c. i. and ii will be  
16 used at each connection point at any storage tank on the Pier or any  
removal trucks.

17 **d. Vessel Painting and Washing:**

- 18 i. Any washing and spraying of the outside of the vessels must be done  
19 with clean water.
- 20 ii. No spray painting or sand blasting of vessels will occur at the facility.
- 21 iii. No mixing of paint or tool cleaning related to vessel painting and  
22 washing will occur on portions of the cruise terminal facility that  
23 discharge stormwater to Elliot Bay.
- 24 iv. Tarps or drop cloths will be used as follows:
- 25 1. A tarp or drop cloth will be affixed under or on the floor of any  
26 manlift (i.e. cherry picker) basket when using a manlift located on  
the pier for any painting, paint preparation, finish application or

washing occurs. The floor of the manlift will be inspected for any paint drips or spills and wiped before removing the tarp or drop cloth from beneath.

2. In addition to a tarp affixed under or on the floor of the manlift, it will be recommended to the vessel operators to exercise additional caution to prevent the discharge of paint drips and paint chips directly in to the water, and in so doing consider the design, installation and use of any drop cloth device attached to the vessel or extended from the manlift, to the extent they will not compromise the safety of the person operating the manlift or other employees working in the area.
3. Contents collected on the drop cloth must be disposed of promptly and in a manner consistent with federal, state, and local laws.
4. Upon completion of any exterior painting of vessels, the surface of the Pier in the vicinity of the painting activity will be inspected for paint drip and cleaned up as necessary.
5. These activities will be monitored to ensure that BMPs are properly implemented.

**e. Housekeeping:**

- i. The cruise terminal facility Storm Water Pollution Prevention Plan will identify a pollution prevention team responsible for proper application of all BMPs.
- ii. Prior to the beginning of each cruise season, all Port and operator employees and managing representatives of cruise-related vendors or contracted entities working on the Pier with BMP-related duties will be informed about the importance of best management practices at the facility. All employees assigned to perform any function related to BMP implementation must be instructed on how to perform those functions effectively.
- iii. As a result of daily cruise operations, material tracked out of the Service Area onto the pier surface that is beyond the sanitary sewer collection area will be cleaned up at the end of the day's operation.
- iv. At the start of each cruise season, a list of current BMPs specific to cruise terminal operations will be circulated to terminal operator, stevedore companies, all vessels, and all known vendors or on the first occasion that new vessels and vendors arrive at the Pier.

v. When there are vessels at the cruise terminal facility, daily inspections must be conducted of all operations having the potential to contaminate stormwater and to ensure the BMPs are being applied to those operations. Corrections must be immediately made when any problems are found.

vi. The Pier surface during the cruise season will be vacuum swept as follows: Every week or as deemed necessary a vacuum sweeper will be used to spot clean the high traffic areas, and a large mechanical vacuum sweeper-truck will be used once a month during cruise season as well as before and after the cruise season.

**f. Spill Prevention and Cleanup Program:**

i. A spill prevention and clean-up program that is specific to the facility will be maintained and implemented.

ii. Employees, representatives and contractors with BMP-associated Terminal duties must receive training on spill prevention and cleanup measures at the beginning of each cruise season.

9. The Port must provide Soundkeeper with a report twice a year documenting the implementation of the above BMPs on Pier 66. The report will include the following descriptions: (a) the Port's implementation of each BMP at Pier 66; (b) the entities involved in cruise-related activities who were informed about the BMPs by the Port; and (c) the Port's knowledge regarding the implementation of each BMP by these other entities. The report will identify the author. The Port will obtain information on the implementation of the BMPs to the extent it is reasonably practical from Port internal work orders and information it obtains from the cruise terminal facility operator. This list is not exhaustive or intended to limit the information the Port may provide in the reports.

10. As part of the consideration for this Consent Decree the Port and CTA will implement the BMPs set forth in Paragraph 8 for cruise-related activities at Pier 91, and provide the same reports identified in paragraph 9, above, as will be reflected in the separately enforceable Pier 91 Agreement.



11. Within ten (10) days following the entry of the Consent Decree, the Port shall pay Two Hundred Fifty Thousand Dollars (\$250,000) to Soundkeeper. The Port's payments shall be in full and complete satisfaction of any claims Soundkeeper has or may have against the Port, either legal or equitable, and of any kind of nature whatsoever, for fees, expenses, and costs incurred in this litigation, or for civil penalties under the Clean Water Act. Soundkeeper may allocate the payment as it deems appropriate. The parties agree to have payment made by check to the order of "Puget Soundkeeper Alliance c/o Smith and Lowney Trust Account" and deposited in the Smith and Lowney Trust account. The Port will mail the check to 2317 East John Street Seattle, WA 98112, Attn. Knoll Lowney.

12. Within ten (10) days of entry of this Consent Decree, CTA will pay Soundkeeper Two Hundred Fifty Thousand Dollars (\$250,000). CTA's payment will be in full and complete satisfaction of any claims Soundkeeper has or may have against CTA, either legal or equitable, and of any kind of nature whatsoever, for fees, expenses, and costs incurred in this litigation, or for civil penalties under the Clean Water Act. Soundkeeper may allocate the payment as it deems appropriate. The parties agree to have payment made by check to the order of "Puget Soundkeeper Alliance c/o Smith and Lowney Trust Account" and deposited in the Smith and Lowney Trust account. CTA will mail the check to 2317 East John Street Seattle, WA 98112, Attn. Knoll Lowney.

13. In consideration of CTA's and the Port's obligations under this Consent Decree, for the term of this Consent Decree, as defined in paragraph 17, below, Soundkeeper covenants not to sue CTA, CTA's members, the Port, or any successor owner or operator of the Facility, or associate with, or support financially or otherwise any other person to sue CTA, CTA's members, or the Port for any of the discharges associated with the cruise-related activities at the Facility that Soundkeeper alleged in its expert reports or pleadings should have necessitated CTA, CTA's members, and/or the Port to obtain coverage for the Facility under Ecology's ISGP.

1           14.     A force majeure event is any event outside the reasonable control of the Port that  
2 causes a delay in performing tasks required by this decree that cannot be cured by due diligence.  
3 Any delay in performance by the Port of a task required by this Consent Decree caused by a  
4 force majeure event is not a failure to comply with the terms of this decree, provided that the  
5 Port notifies Soundkeeper of the event; the steps that the Port will take to perform the task; the  
6 projected time that will be needed to complete the task; and the measures that have been taken or  
7 will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in  
8 completing the task.

9           The Port will notify Soundkeeper of the occurrence of a force majeure event as soon as  
10 reasonably possible but, in any case, no later than fifteen days after the occurrence of the event.  
11 In such event, the time for performance of the task will be extended for a reasonable period of  
12 time following the force majeure event.

13           By way of example and not limitation, force majeure events include but are not limited  
14 to:

- 15           a.     Acts of God, war, insurrection, terrorism, or civil disturbance;
- 16           b.     Earthquakes, landslides, fire, floods;
- 17           c.     Actions or inactions of third parties over which defendant has no control;
- 18           d.     Unusually adverse weather conditions;
- 19           e.     Restraint by court order or order of public authority;
- 20           f.     Strikes or other labor disruptions;
- 21           g.     Any permit or other approval sought by the Port from a government  
22 authority to implement any of the actions required by this consent decree  
23 where such approval is not granted or is delayed, and where the Port has  
24 timely and in good faith sought the permit or approval; and
- 25           h.     Litigation, arbitration, or mediation that causes delay.
- 26

1           15.     This Consent Decree takes effect on the date it is entered by the Court. It  
2 terminates 10 years after the date of entry unless good cause exists for earlier termination based  
3 upon either a material change of cruise-related activities that are subject to the above BMPs, or a  
4 material change in the water quality regulations regarding these activities. If either party believes  
5 that there has been a material change in either the cruise-terminal activities or water quality  
6 regulations, that party may ask the Court under its continuing jurisdiction to terminate the  
7 Consent Decree on that basis. Before applying to the Court for this determination, the parties  
8 must first provide written notice to the other parties of the material change(s) alleged to have  
9 occurred and then meet and attempt to resolve any dispute regarding the allegations and discuss  
10 any suggested measures for resolving the dispute. A meeting should be held as soon as practical  
11 after providing the written notice but must be held within 30 days after such notice, provided,  
12 however, that if the party(ies) who opposes early termination fails to meet with the party who  
13 proposes early termination within 30 days after such notice, the party(ies) who proposes early  
14 termination may ask the Court to terminate the Consent Decree without further delay. Any notice  
15 as required by this paragraph must be sent via first class mail to the party and to its counsel of  
16 record.

17           16.     This Consent Decree may not be used as evidence in any proceeding or as an  
18 admission or adjudication with respect to any allegations in the Complaint or any fact or  
19 conclusion of law with respect to any matter alleged in or arising out of the Complaint.

20           17.     The Court retains jurisdiction over this matter. While this decree remains in  
21 force, this case may be reopened without filing fee so that the parties may apply to the Court for  
22 any further order that may be necessary to construe, carry out, enforce compliance, and/or  
23 resolve any dispute regarding the terms or conditions of the Consent Decree until termination of  
24 the Consent Decree. Before applying to the Court for relief, the parties must first attempt to  
25 resolve any dispute regarding implementation of, or compliance with, this Consent Decree by: 1)  
26 providing written notice to the other parties of the dispute; and 2) meeting to discuss the dispute

1 and any suggested measures for resolving the dispute. Such a meeting should be held as soon as  
2 practical but must be held within 30 days after notice of a request for such a meeting to the other  
3 party and its counsel of record. No application may be made to the Court until after the notice  
4 and meeting required under this paragraph except that the party(ies) who provide notice of a  
5 dispute may apply to the Court without further delay if the other party(ies) fail to meet within 30  
6 days after notice of a request for meeting. The prevailing or substantially prevailing party in any  
7 proceedings to enforce the terms and conditions of this Consent Decree will be entitled to its  
8 reasonable attorneys' fees and costs.

9 18. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent  
10 judgment can be entered in a Clean Water Act suit to which the United States is not a party prior  
11 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S.  
12 Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of this  
13 Consent Decree by the parties, Soundkeeper will serve copies of it upon the Administrator of the  
14 U.S. EPA and the Attorney General.

15 19. The parties have participated in drafting this decree. The terms of this Consent  
16 Decree will be construed without regard to who drafted the various provisions and will be  
17 construed as though both parties participated equally in the drafting. Accordingly, any rule of  
18 construction that a document is to be construed against the drafting party is not applicable to this  
19 Consent Decree.

20 20. This Consent Decree may be modified only upon the approval of the Court.

21 21. If for any reason the Court declines to approve this Consent Decree in the form  
22 presented, this Consent Decree is voidable at the discretion of any party. The parties agree to  
23 continue negotiations in good faith in an attempt to cure any objection raised by the Court to  
24 entry of this Consent Decree.

25 22. Notifications required by this Consent Decree must be in writing. The sending  
26 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or

1 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally  
2 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other  
3 communication regarding this Consent Decree to be valid, it must be delivered to the receiving  
4 party at the addresses listed below or to any other address designated by the receiving party in a  
5 notice in accordance with this paragraph.

6 **If to Soundkeeper:**

7 Katelyn Kinn  
8 Puget Soundkeeper Alliance  
9 130 Nickerson Street, Suite 107  
10 Seattle WA 98109  
11 Email: [katelyn@pugetsoundkeeper.org](mailto:katelyn@pugetsoundkeeper.org)

12 and to:

13 Smith & Lowney PLLC  
14 2317 East John St.  
15 Seattle, WA 98112  
16 Email: [marcz@igc.org](mailto:marcz@igc.org)

17 **If to Port of Seattle:**

18 Thomas H. Tanaka  
19 Port of Seattle  
20 2711 Alaskan Way, Pier 69  
21 PO Box 1209  
22 Seattle, WA 98111-1209  
23 Email: [Tanaka.t@portseattle.org](mailto:Tanaka.t@portseattle.org)

24 and to:

25 Tom McDonald  
26 Cascadia Law Group PLLC  
606 Columbia St. NW, Suite 212  
Olympia, WA 98501  
Email: [tmcdonald@cascadialaw.com](mailto:tmcdonald@cascadialaw.com)

If to CTA:

Jean Cox  
Cruise Terminals of America, LLC  
2225 Alaska Way  
Seattle, WA 98121  
Email: [jean.cox@seattlepier66.com](mailto:jean.cox@seattlepier66.com)

and to:

Dianne K. Conway  
Gordon Thomas Honeywell LLP  
1201 Pacific Ave., Suite 2100  
Tacoma, WA 98407  
Email: [dconway@gth-law.com](mailto:dconway@gth-law.com)

A notice or other communication regarding this Consent Decree is effective when received, unless the notice or other communication is received after 5:00 p.m., in which case the notice will be deemed received at 9:00 a.m. on the next business day. A notice or other communication will be deemed to have been received: (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing notice or other communication regarding this Consent Decree.

DATED this 6th day of July 2016.



John C. Coughenour  
UNITED STATES DISTRICT JUDGE

## **ATTACHMENT B**



## LEGEND

- |                                    |  |                               |
|------------------------------------|--|-------------------------------|
| ⊙ Storm Drain Outfall              | ⊙ City Combined Sewer Outfall                      | — Storm: Pipe                 |
| ● Sampling Point                   | ■ Waste Storage and Handling - Non-Hazardous Waste | → Stormwater Flow Direction   |
| ■ Storm: Catch Basin, Trench Drain | ■ Waste Storage and Handling - Hazardous Waste     | ▨ Building, Covered Structure |
| ● Oil Water Separator              | — City Combined Sewer Line                         | ▨ Industrial/Activity Area    |
| ● Storm: Manhole                   |  | ▨ Property Boundary           |
|                                    |  | ▨ Subbasin Boundary           |



GSI Job No	4851	Map ID	TTI_SiteMap
Issued	19-Mar-2018	Drawn By	AV
Checked By	CH	Approved By	CH

## SITE MAP

Total Terminals International, LLC - Terminal 46  
Seattle, Washington

APPENDIX B



## **ATTACHMENT C**

201 4TH STREET, SUITE 102, OAKLAND, CA 94607  
ROSE@ROSEFDN.ORG



WWW.ROSEFDN.ORG

OFFICE: 510.658.0702  
FAX: 510.658.0732

August 21, 2019

Thomas Swegle  
Environment & Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, D.C. 20044-7415

Re: Puget Soundkeeper Alliance v. Total Terminals International, LLC (Case No. 2:18-cv-00540-RSL)

Dear Mr. Swegle,

This letter is intended to provide assurance that I have received the draft Consent Decree between Puget Soundkeeper Alliance and Total Terminal International, LLC ("TTI") and that I am authorized by my Board of Directors to make the following binding commitments on behalf of the Rose Foundation.

- 1) I understand that the Rose Foundation should receive funds from TTC as specified in the Consent Decree.
- 2) The Rose Foundation shall prioritize the use of TTI funds for environmentally beneficial projects in Elliot Bay or within 50 miles of TTI's facility relating to water quality improvements. The funds shall be dispersed through the Rose Foundation's Puget Sound Stewardship & Mitigation Fund, a grantmaking fund which is wholly dedicated to supporting projects which benefit the water quality of Puget Sound.
- 3) Due to the disproportionate impact of pollution from facilities such TTI to low-income neighborhoods and communities of color, the Rose Foundation's policy is to prioritize projects from these neighborhoods in selecting grantees.
- 4) After the funds have been disbursed, the Rose Foundation shall send a report to the Justice Department, the Court and the Parties describing how the funds were utilized and demonstrating conformance with the nexus of the Consent Decree.

**Rose Foundation for Communities and the Environment**

The Rose Foundation is a 501(c)(3) public charity (tax ID#94-3179772). Its mission is to support grassroots initiatives to inspire community action to protect the environment, consumers and public health. To fulfill this mission, the Rose Foundation conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations. The Rose Foundation does not support lobbying activities that are prohibited by

Section 501(c)(3) of the IRS Code, and no portion of the TTI funds shall be used to support any political lobbying activities whatsoever.

- Work directly in schools and in the community to encourage environmental stewardship and civic participation.
- Help government efforts to control pollution and protect the environment by encouraging community engagement in local, state and federal research and policy development.

Within this broad range of activities, all of the Rose Foundation's work revolves around one or more of the following strategic themes:

- Build and maintain a bridge between the community and organized philanthropy.
- Protect the natural environment, public health, and community and consumer rights.
- Promote collaboration between labor, environmental, business, consumer and social interests.
- Cultivate a new generation of environmental stewards and social policy leaders.
- Respect the inalienable rights protected by our nation's constitution, and the essential human rights to clean air, clean water, and individual dignity and privacy.

The Rose Foundation is governed by a Board of Directors. Grant applicants are required to submit written proposals, which must include at a minimum specific information about the goals, activities and projected outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request. The Foundation may require additional information in order to fully evaluate the application. Applications are first screened by Foundation staff. Staff then makes recommendations to the Foundation Board for action. The Foundation requires all projects to submit written reports within one year of receipt of the grant award describing work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Maze and Associates are posted on the Foundation's website [www.rosefdn.org](http://www.rosefdn.org).

I hope this provides you with the information you require. Please do not hesitate to contact me with any questions, or for additional information at (510) 658-0702 or [tlittle@rosefdn.org](mailto:tlittle@rosefdn.org).

Sincerely,



Tim Little, Executive Director

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883, FAX (206) 860-4187

September 11, 2019

Docket Clerk for the Honorable Robert L. Lasnik

Re: *Puget Soundkeeper Alliance v. Total Terminals International, LLC et al.* - No.  
2:18-cv-00540-RSL; Waiting period before entry of consent decree

Dear Docket Clerk:

This is submitted with the proposed Consent Decree and Joint Motion for Entry of Consent Decree for the above-captioned case. Please note that, pursuant to the explicit direction of the Clean Water Act, the Consent Decree should not be entered by the Court until a 45-day Department of Justice and EPA review period has expired. Thus, the hearing is noted accordingly. Please do not have this Consent Decree entered before that time. Please call if you have any question about this. Thank you.

Sincerely,

SMITH & LOWNEY, P.L.L.C.

By: s/Alyssa Englebrecht  
Alyssa Englebrecht, WSBA No. 46773  
Attorney for Plaintiff